

March 13, 2008

Fair Treatment of Experienced Pilots Act (The Age 65 Law)

Information, Questions and Answers

General

This document contains information relating to the Fair Treatment of Experienced Pilots Act (the Act) that was signed into law by the President on December 13, 2007. That Act is recorded as Public Law 110-135, and became effective immediately.

The Act is self-explanatory and clear in most respects, but it raises some questions. In an effort to promote uniform understanding of the Act, and uniform implementation of its provisions, the FAA is consolidating in this document questions and answers relating to safety issues, as those questions are received and resolved. The date of the current revision is shown at the top of each page, and is updated each time this document is revised with new or amended content.

For any question not addressed here, a Web visitor may address the question to the following FAA email address: **9-awa-avs-afs-200-age65@faa.gov**

Your question will be acknowledged and answered as quickly as possible.

Please do not address questions to the FAA regarding § 44729(e) or § 44729(f) of the Act. Those subparagraphs concern issues beyond the scope of the FAA's safety mission.

Background

In November, 2006, the International Civil Aviation Organization (ICAO) revised the maximum age for certain pilots in international operations from age 60 to age 65. Until 12/13/07, the United States, an ICAO member state, limited its pilots operating under Title 14 of the Code of Federal Regulations (14 CFR) part 121 to age 60. Now those pilots may continue until age 65, as specified in the Act.

The exact language of the Act can be downloaded at the following public website:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ135.110.pdf

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March 13, 2008

Key provisions of the Act include the following:

- As of 12/13/07, part 121, § 121.383(c), specifying age 60, ceases to be effective.
- A pilot age 60+ acting as pilot in command (PIC) in international operations must be paired with a pilot under age 60 (consistent with the current ICAO requirement).
- In domestic operations both pilots may be age 60+.
- It permits the continued employment of a pilot who reaches age 60 on or after 12/13/07.
- It permits the employment as a new-hire a pilot who reached age 60 before 12/13/07.
- A pilot age 60+ will not be subjected to different, greater, or more frequent medical exams.
- Any pilot age 60+ must hold a first-class medical certificate, renewable on a 6-month cycle.
- Any air carrier employing pilots age 60+ must adjust its training program to ensure such pilots' skill and judgment continue at acceptable levels.
- Any pilot age 60+ must undergo a line check at 6-month intervals.
- For a pilot age 60+ acting as second in command (SIC), a regularly scheduled simulator evaluation may substitute for a required line check.

Questions and Answers

Question #1: During international operations, must a pilot younger than age 60 be on the flight deck at all times when a PIC over age 60 is on the flight deck?

Answer: No. A pilot younger than age 60 does not have to be on the flight deck at all times when a PIC over age 60 is on the flight deck. When there is an augmented flight deck crew assigned to a flight, that assigned flight deck crew must include one pilot who is licensed, current, qualified, appropriately rated for all phases of flight, and younger than age 60.

Under Title 49 of the United States Code (49 U.S.C.), § 44729(c)(1), a pilot who has attained 60 years of age may serve as a PIC for part 121 operations between the United States and another country only if there is another pilot assigned to the flight deck crew who has not yet attained 60 years of age. This section reflects Congress's intent to follow the recommend International Civil Aviation Organization (ICAO) standard for international operations.

However, ICAO and the FAA suggest that a pilot under age 60 be at the controls (a crew duty position) during critical phases of the flight (such as below 10,000 feet). The FAA expects air carriers and PICs to use best scheduling practices and crew management to ensure maximum compliance with this recommendation to have a pilot under age 60 be at the controls (a crew duty position) during critical phases of the flight (such as below 10,000 feet). Issues such as pilot seniority are not considered valid reasons for noncompliance.

March 13, 2008

The minimum requirement for international operations, however, is that a flight may not depart unless the flight deck crew includes one pilot who is licensed, current, qualified, appropriately rated for all phases of flight, and younger than age 60.

Question #2: A part 121 flight departs from a point in the United States, transits international airspace, and then lands at a point in the United States without making an intermediary stop. Under US code (Title 49) if the PIC is over age 60 does one member of the assigned flight deck crew have to be under age 60?

Answer: No. In accordance with the Fair Treatment of Experienced Pilots Act, now codified at 49 USC Section 44729 (also known as the age 65 law), all pilots could be over age 60 as long as they had not attained age 65. For example, for a flight from the continental US to Alaska, Hawaii, Puerto Rico, the US Virgin Islands, or Guam, the US code would not require a pilot under the age of 60.

Question #3: What is the deadline for an SIC's first line check under the Act?

Answer: June 13, 2008. An SIC age 60+ is required to have a line check (or a regularly scheduled simulator evaluation) within six months after enactment of the Act (enacted 12/13/07), and every six months thereafter.

Question #4: Is there a grace period associated with the six-month checks?

Answer: No. A public law trumps FAA regulations, and, unlike FAA regulations, the Act makes no provision for a grace month in respect to the six-month checks required of pilots age 60+. Therefore, a six-month check could be conducted earlier, but not later, than six months since the previous check.

Question #5: Is the six-month cycle computed on calendar months? or nominal 30-day months? or nominal 31-day months?

Answer: Months are calculated from Dec. 13, 2007, forward to Jan. 13, 2008, to Feb. 13, 2008, and so forth. Unlike FAA regulations, the Act makes no provision for a "base month" or for any other method by which a six-month cycle might be extended. The Act trumps the more permissive practice allowed by FAA regulations – but only for those pilots age 60+.

March 13, 2008

Question #6: What is a *regularly scheduled simulator evaluation* under the Act?

Answer: A regularly scheduled simulator evaluation is any training or checking session in a simulator regularly occurring as part of an air carrier's approved training program for pilots. Examples include initial, transition, upgrade, requalification and recurrent checks conducted under Part 121 Appendix F; training in lieu of a check permitted by 121.409; recurrent LOFT as permitted by 121.409; or an LOE, a maneuvers validation, or a simulator training event regularly occurring under the Advanced Qualification Program (AQP).

Question #7: Does participation in AQP permit flexibility of the scheduling of the six-month checks required by the Act?

Answer: No. The Act stipulates that a line check (or, for SICs, a regularly scheduled simulator evaluation) be conducted within six months of enactment (12/13/07) and every six months thereafter. There is no special provision for participants in AQP.

Question #8:

A person turned age 60 before the enactment of The Fair Treatment for Experienced Pilots Act (the Act) on Dec. 13, 2007. That person was administering flight checks for a part 121 operator in the jumpseat of aircraft before enactment, and continues to do so today. Is that person a "required flight deck crewmember" within the meaning of Section (e) of the Act?

Answer:

The FAA believes that it is reasonable for an airline and others to construe "required flight deck crewmember" to include those check airmen who were over Age-60 and conducting checks from the jumpseat of aircraft operated by part 121 operators on and after enactment. Although those individuals were not serving in required pilot positions during such flights conducted by an operator certificated to engage in part 121 operations, they were required by FAA safety rules for part 121 operators to complete FAA-required line checks and the like of other part 121 pilots. Additionally, when such checks were completed in airborne aircraft, the presence of these individuals was required in order for the check to count as meeting FAA safety requirements. Thus, we believe that airlines and others can reasonably conclude that such individuals were and are "required flight deck crewmembers".

The FAA does not administer any aspect of Section (e) of the Act and the FAA need not interpret that provision of the Act in order to administer safety standards because that provision is related to employment benefits and employment seniority issues. Other sections of the Act reflect Congress' s safety determination that, generally speaking, pilots can serve up to age 65 in part 121 operations. Because the FAA would administer such other sections and because the FAA has to conform its safety rules to those safety provisions of the Act, the FAA's interpretation of those other provisions would be given great deference by the courts. Again, however, Section (e) deals with economic issues regarding who retains certain economic benefits under a seniority

March 13, 2008

system and who will be treated as a new hire for purposes of receiving financial compensation and other benefits from the airline. Thus, our views on the meaning of Section (e) are merely advisory.

Question #9:

When a pilot turns 60, in the future, does he need a line check right away or six months after he turned 60?

Answer:

The pilot would need a line check (or, for an SIC, a regularly scheduled simulator evaluation) within six months of his or her last line check (or regularly scheduled simulator evaluation, as applicable).

The concern of Congress in drafting The Fair Treatment for Experienced Pilots Act (the Act) was to address critics' concerns that pilots' performance might deteriorate after age 60. Accordingly, Congress specified health checks and performance checks at six-month intervals for any pilot over age 60.